

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

*IN RE CEDAR SHAKE & SHINGLE
ANTITRUST LITIGATION*

NO. 2:19-cv-00288-MJP

This Document Relates to:
ALL CLASS ACTIONS

**UNOPPOSED MOTION AND
ORDER GRANTING LETTER
ROGATORY RE: DOCUMENT
SUBPOENA TO INTERTEK
TESTING SERVICES, NA LTD.**

NOTE ON MOTION CALENDAR:
December 31, 2019

I. UNOPPOSED MOTION

Pursuant to Federal Rule of Civil Procedure 28(b)(3) and 28 U.S.C. § 1781(b)(2), Class Plaintiffs move this Court for an Order issuing the attached Letter Rogatory to the appropriate authorities in British Columbia, Canada for documents from Intertek Testing Services, NA Ltd. (“Intertek”), the third-party inspector with which Defendant Cedar Shake and Shingle Bureau (“CSSB”) has an inspection services agreement. Class Plaintiffs seek documents as described in the attached Exhibit A.

Courts have the inherent authority to issue Letters Rogatory and Letters of Request to Foreign nations, and may request that a foreign nation order a witness to provide testimony that

1 will aid in the resolution of a matter pending in the United States. *See United States v. Reagan*,
2 453 F.2d 165, 172 (6th Cir. 1971); *United States v. Staples*, 256 F.2d 290, 292 (9th Cir. 1958).
3 In addition, federal statutes provide for the issuance of Letters Rogatory by a federal court.
4 Under Federal Rule of Civil Procedure 28(b)(1), a deposition may be taken in a foreign country
5 pursuant to the issuance of a Letter Rogatory. Under 28 U.S.C. § 1781(b)(2), a tribunal in the
6 United States may directly transmit a Letter Rogatory or request to a foreign or international
7 tribunal. The British Columbia Evidence Act also provides that a court outside of Canada may
8 serve Letters Rogatory upon a Canadian court. *See British Columbia Evidence Act*, R.S.B.C.
9 1996, C. 124 § 53.

10 On applications for the issuance of Letters Rogatory, the Court will not ordinarily weigh
11 the evidence to be elicited, nor will the Court determine whether the witnesses will be able to
12 provide the anticipated testimony. *B&L Drilling Electronics v. Totco*, 87 F.R.D. 543, 545
13 (W.D. Okla. 1978). Rather, “good reason” must be shown for denying the issuance of a Letter
14 Rogatory. *Zassenhaus v. Evening Star Newspaper Co.*, 404 F.2d 1361, 1364 (D.C. Cir. 1968).

15 Here, Class Plaintiffs have been informed by Intertek that it will produce documents as
16 sought in the attached Exhibit A only in response to a filed court Order. Thus, it is necessary to
17 compel production of documents through a Letter Rogatory.

18 Class Plaintiffs seek documents from Defendant CSSB’s sole inspection entity to
19 provide further evidence to prove the allegations in their Second Amended Complaints. For
20 example, Class Plaintiffs allege that Defendants have (and have wielded) the power to prevent
21 the sale of cedar shakes and shingles (“CSS”) made by CSSB member (“Member”) mills by
22 “red tagging” product—preventing its sale—until the product is re-graded or re-inspected by
23 CSSB’s auditor, Clay Walker, or Intertek acting under Clay Walker’s supervision. *See, e.g.*,

1 Direct Purchaser Pls.’ Second Am. Class Action Compl. (“DPP SAC”), ECF No. 53 ¶ 182.
2 Class Plaintiffs thus seek documents related to, among other things, Intertek’s role as the
3 inspection agency for CSSB Members and any documents related to Intertek’s “decision to ‘red
4 tag’ any CSSB Member.” *See* Ex. A. They also seek documents in Intertek’s possession,
5 custody, or control relating to “the probation, potential probation, termination or potential
6 termination of a CSSB Member or Members from CSSB,” and the “competitive conditions” for
7 CSS. *Id.* Class Plaintiffs have volunteered to pay reasonable fees and judicial costs associated
8 with the requested production of records. The Court does not adopt these allegations as findings
9 of fact or law.

10 Defendants do not oppose the issuance of a Letter Rogatory compelling the documents
11 identified in Exhibit A to the attached Letter Rogatory. Defendants’ non-opposition is made
12 without prejudice to its right to oppose the introduction of any documents or information
13 obtained from Intertek based on any objection allowed by the Federal Rules of Civil Procedure
14 or other applicable law. Defendants expressly reserve all evidentiary and trial objections.
15 Defendants further reserve the right to obtain from Class Plaintiffs copies of all documents
16 obtained from Intertek pursuant to the Letter Rogatory. Finally, Defendants contend that
17 CSSB’s agreement with Intertek does not prohibit Intertek from providing inspection services
18 to manufacturers of CSS that are not Members of CSSB.

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14 *Co-Lead Counsel for the Proposed End User*
15 *Plaintiff Classes*

16 **II. ORDER**

17 Upon consideration of the pleadings, declarations, and orders filed to date in this case,
18 the Court finds and orders as follows:

19 **IT IS HEREBY ORDERED, ADJUDGED, AND DECREED THAT:**

20 The Court, having reviewed the submitted material and relevant authority, and upon
21 consideration of the pleadings, declarations, and orders filed to date in this case, and therefore
22 being fully informed, GRANTS Class Plaintiffs' Unopposed Motion for Letter Rogatory Re:
23

1 Document Subpoena to Intertek Testing Services, NA Ltd., and will execute the Letter
2 Rogatory without delay.

3 IT IS SO ORDERED.

4 DATED this _2nd_ day of _January_, 2020.

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8 Marsha J. Pechman
9 United States Senior District Judge

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CERTIFICATE OF SERVICE

I hereby certify that on January 2, 2020, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to all parties registered on the CM/ECF system. All other parties (if any) shall be served in accordance with the Federal Rules of Civil Procedure.

DATED at Seattle, Washington, this 2nd day of January, 2020.

s/ Kim D. Stephens
Kim D. Stephens